

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
LIND, KRAUSS, and PENLAND
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist FREDERICK A. THOMAS III
United States Army, Appellant

ARMY 20140707

Headquarters, Fort Campbell
Steven E. Walburn, Military Judge
Colonel Jeff A. Bovarnick, Staff Judge Advocate

For Appellant: Major Aaron R. Inkenbrandt, JA; Captain J. David Hammond, JA.

For Appellee: Major John K. Choike, JA.

9 June 2015

SUMMARY DISPOSITION

PENLAND, Judge:

A military judge sitting as a special court-martial convicted appellant, contrary to his pleas, of two specifications of false official statement and two specifications of larceny of government property of a value of over \$500 in violation of Articles 107 and 121, Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. §§ 907, 921 (2012). The military judge sentenced appellant to a bad-conduct discharge, confinement for eight months, forfeiture of \$1,000 pay per month for eight months, and reduction to the grade of E-1. The convening authority approved only so much of the sentence as provided for a bad-conduct discharge, confinement for eight months, and reduction to the grade of E-1.

We review this case under Article 66, UCMJ. Appellant submitted a merits pleading to this court and personally raised issues pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). We have considered those matters personally raised by appellant and find they lack merit. However, we have identified one issue that warrants discussion and relief.

FACTS

Prior to his permanent change of duty station to Korea, appellant found out his divorce was finalized. However, upon his arrival in Korea, appellant recertified he was still married and entitled to Basic Allowance for Housing (BAH) and Family Separation Pay (FSP).^{*} Consequently, appellant received \$1,200 monthly BAH and \$250 monthly FSP while stationed at Camp Casey, Korea. Prior to departing Korea, appellant again recertified he was married and entitled to BAH and FSP. Appellant later told a Criminal Investigative Command (CID) agent that he recertified he was still entitled to BAH and FSP to receive money for his debt and gambling issues.

In Specification 1 of Charge II, appellant was charged with stealing over \$500 in BAH on divers occasions. In Specification 2 of Charge II, appellant was charged with stealing over \$500 in FSP on divers occasions.

LAW & ANALYSIS

We review issues of factual and legal sufficiency de novo. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002). The test for factual sufficiency is whether, after weighing the evidence and making allowances for not having personally observed the witnesses, this court is convinced of appellant's guilt beyond a reasonable doubt. *Id.* The test for legal sufficiency is whether, considering all of the evidence in the light most favorable to the government, a reasonable fact-finder could have found all of the essential elements of the offense beyond a reasonable doubt. *United States v. Winckelmann*, 70 M.J. 403, 406 (C.A.A.F. 2011) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

Our examination of the record reveals no evidence that appellant committed larceny of BAH *on divers occasions* or larceny of FSP *on divers occasions*. On the contrary, appellant's recertification of his marital status upon arrival in Korea was the one action that resulted in his continuous unlawful receipt of BAH and FSP for the entire period of time he was stationed in Korea. *See United States v. Hines*, 73 M.J. 119, 121 (C.A.A.F. 2014) (“[T]he formulation of a plan or scheme or the setting up of a mechanism which, when put into operation, will result in the taking or diversion of sums of money on a recurring basis, will produce but one crime.” (quoting *United States v. Billingslea*, 603 F.2d 515, 520 (5th Cir. 1979))) (internal quotation marks omitted) (alteration in original). As such, we find appellant committed a single larceny of BAH totaling over \$500 and a single larceny of FSP totaling over \$500.

^{*} The Chief of Military Pay Operations of the Fort Campbell Military Pay Office testified that appellant's recertification was completed on a Department of the Army Form 5960, “Authorization to Start, Stop, or Change Basic Allowance for Quarters (BAQ) And/Or Variable Housing Allowance (VHA).”

CONCLUSION

We affirm only so much of the findings of guilty of Specifications 1 and 2 of Charge II and Charge II as provide:

Specification 1: In that Specialist Frederick A. Thomas III, U.S. Army, did, at or near Camp Casey, Korea, between on or about 22 August 2012 and on or about 23 October 2013, steal money in the form of Basic Allowance for Housing, of a value of over \$500, the property of the United States.

Specification 2: In that Specialist Frederick A. Thomas III, U.S. Army, did, at or near Camp Casey, Korea, between on or about 12 September 2012 and on or about 23 October 2013, steal money in the form of Family Separation Pay, of a value of over \$500, the property of the United States.

The remaining findings of guilty are AFFIRMED. Reassessing the sentence on the basis of the errors noted, the entire record, and applying the principles of *United States v. Sales*, 22 M.J. 305, 307-08 (C.M.A. 1986) and the factors set forth in *United States v. Winckelmann*, 73 M.J. 11, 15-16 (C.A.A.F. 2013), we are confident the judge would have sentenced appellant to the same sentence absent the errors. The approved sentence is AFFIRMED.

Senior Judge LIND and Judge KRAUSS concur.



FOR THE COURT:

A handwritten signature in black ink, which appears to read "Malcolm H. Squires, Jr.".

MALCOLM H. SQUIRES, JR.
Clerk of Court